

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

YOHANNES GEBREZGIE,
Plaintiff,
vs.
PHILLIPS, et al.,
Defendants.

1:22-cv-00426-GSA-PC
**ORDER FOR CLERK TO RANDOMLY
ASSIGN UNITED STATES DISTRICT
JUDGE TO THIS CASE**
AND
**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE
BE DISMISSED WITHOUT PREJUDICE
FOR PLAINTIFF'S FAILURE TO
COMPLY WITH COURT ORDER
(ECF No. 3.)**
**OBJECTIONS, IF ANY, DUE IN THIRTY
DAYS**

I. BACKGROUND

On April 18, 2022, the Court issued an order requiring Plaintiff to submit a regular civil application to proceed *in forma pauperis* or pay the \$402.00 filing fee for this action, within thirty days. (ECF No. 3.) The thirty-day deadline has expired, and Plaintiff has not filed an application to proceed *in forma pauperis*, paid the filing fee, or otherwise responded to the court's order.

1 **II. DISMISSAL FOR FAILURE TO COMPLY WITH COURT ORDER**

2 In determining whether to dismiss this action for failure to comply with the directives
3 set forth in its order, “the Court must weigh the following factors: (1) the public’s interest in
4 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
5 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
6 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d
7 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

8 “The public’s interest in expeditious resolution of litigation always favors dismissal,”
9 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
10 action has been pending since April 13, 2022. Plaintiff’s failure to respond to the Court’s order
11 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court cannot
12 continue to expend its scarce resources assisting a litigant who will not help himself by
13 resolving the payment of the filing fee for his lawsuit. Thus, both the first and second factors
14 weigh in favor of dismissal.

15 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
16 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
17 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and
18 it is Plaintiff’s failure to respond to the Court’s order that is causing delay. Therefore, the third
19 factor weighs in favor of dismissal.

20 As for the availability of lesser sanctions, at this stage in the proceedings there is little
21 available to the Court which would constitute a satisfactory lesser sanction while protecting the
22 Court from further unnecessary expenditure of its scarce resources. Plaintiff has not paid the
23 filing fee for this action, making it likely that he is indigent and monetary sanctions are of little
24 use, and given the early stage of these proceedings, the preclusion of evidence or witnesses is
25 not available. However, inasmuch as the dismissal being considered in this case is without
26 prejudice, the Court is stopping short of issuing the harshest possible sanction of dismissal with
27 prejudice.

1 Finally, because public policy favors disposition on the merits, this factor will always
2 weigh against dismissal. Id. at 643.

3 Based on the foregoing, **IT IS HEREBY ORDERED** that the Clerk of Court randomly
4 assign a United States District Judge to this case.

5 **AND**

6 Accordingly, the court **HEREBY RECOMMENDS** that this action be dismissed
7 without prejudice, based on Plaintiff's failure to obey the court's order of April 18, 2022.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty
10 days after being served with these findings and recommendations, Plaintiff may file written
11 objections with the court. Such a document should be captioned "Objections to Magistrate
12 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
13 within the specified time may waive the right to appeal the District Court's order. Martinez v.
14 Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 IT IS SO ORDERED.
16

17 Dated: June 13, 2022

/s/ Gary S. Austin

18 UNITED STATES MAGISTRATE JUDGE